HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO.700 OF 2006

Between:

Central Power Distribution Company of
A.P. Limited and another

. . .Appellants

AND

Shri M.Laxmi Narsu and another

. . .Respondents

Counsel for the appellants : Shri G.Vidyasagar

Counsel for the respondents : Shri M.Narsimhulu for Smt. A.Pankaja

Dated: 26th June, 2006

: JUDGMENT :

PER G.S.SINGHVI, CJ

This appeal is directed against order dated 28.03.2005 passed by the learned Single Judge in W.P.No.2651 of 2004 whereby he directed that the case of the petitioners (respondents herein) be considered for appointment as Lower Division Clerks as and when vacancies arise in future.

The respondents were initially engaged as contract labour by Andhra Pradesh Central Power Distribution Company for works relating to HT and LT lines, erection of 33 KV and 11 KV lines and repairing and distribution of transformers of A.P. State Electricity Board and Andhra Pradesh Transco. In March 2001, Andhra Pradesh State Electricity Board invited applications for recruitment of Lower Division Clerks. The respondents applied for those posts. They were interviewed in the month of May 2001. However, they were denied appointment on the premise that their contractor had deposed that they had not worked under him.

The respondents challenged the refusal of the concerned authority to appoint them as Lower Division Clerks in Writ Petition No.17163 and 18526 of 2002, which were disposed of by the learned Single Judge with a direction that the concerned authority should verify the certificates issued by the contractors and decide the claim of the petitioners for appointment as Lower Division Clerks. In compliance of the Court's order, the concerned authority considered

the cases of the respondents, but declined to appoint them. This was conveyed to the respondents vide communication dated 13-3-2003. The respondents then filed Writ Petition No.2651 of 2004. They pleaded that the decision of the concerned authority is violative of the policy contained in B.P.Ms.No.36 dated 18-5-1997.

In the counter filed on behalf of the respondents it was pleaded that the vacancies advertised in 2001 had already been filled and, therefore, the petitioners cannot be appointed as Lower Division Clerks.

The learned Single Judge did not advert to the factual matrix of the case and disposed of the writ petition by recording the following observations:

> "Considering the submissions made on either side and on perusal of the material, it is not necessary to go into merits of the claim either way and it would suffice in the interest of justice to direct the respondents to consider the petitioners' cases as and when vacancies arise in the abovementioned post."

Shri G.Vidyasagar, learned counsel for the appellants argued that the order of the learned Single Judge is liable to be declared as vitiated by an error of law because the respondents do not have the right to be appointed against the future vacancies. He further argued that the learned Single Judge could not have, without going into the issue of their eligibility and entitlement to be appointed as Lower Division Clerks, directed consideration of the cases of the respondents for appointment against future vacancies.

Learned counsel for the respondents placed before us copies of B.P. (P&G-Per) Ms.No.36 dated 18.05.1997 and B.P.Ms.No.(P&G-Per) Ms.No.271 dated 31.12.1997 and argued that his clients have a legitimate right to be considered for appointment by way of absorption

against the future vacancies of Lower Division Clerks and the learned Single Judge did not commit any error by directing consideration of their cases for appointment against future vacancies.

In our opinion, the order under challenge is liable to be set aside because, while directing the non-petitioners (appellants herein) to consider the cases of the writ petitioners (respondents herein) for appointment as Lower Division Clerks against future vacancies, the learned Single Judge did not examine the entitlement of the respondents to be appointed as Lower Division Clerks on the basis of the interviews held in May 2001. In our view, the learned Single Judge should have first directed his attention to the issue relating to entitlement of the writ petitioners to be considered for appointment as Lower Division Clerks against future vacancies. For this purpose, he should have adverted to the relevant facts and rules, if any framed, or the orders/policy decisions issued by the Corporation from time to time and then decided whether the writ petitioners are entitled to be considered for appointment as Lower Division Clerks. Without undertaking that exercise, the learned Single Judge was not justified in issuing an omnibus direction to the appellants to consider the cases of the respondents for appointment as Lower Division Clerks against future vacancies.

In view of the above conclusion, we would have set aside the impugned order and dismissed the writ petition, but, keeping in view the fact that the learned Single Judge did not consider on merits the entitlement of the respondents to be appointed as Lower Division Clerks in terms of the policy contained in Circulars dated 18-5-1997 and 31-12-1997, we deem it proper to remand the case to the learned Single Bench for fresh adjudication of the writ petition. Ordered accordingly.

At this stage, learned counsel for the respondents gave out that his clients have already been appointed as Lower Division Clerks. If that be so, we direct that they shall be allowed to continue on the same posts till fresh adjudication of the writ petition.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

Date: 26.06.2006

svs